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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/580,769	08/09/2006	Christopher Iain Grainger	GJE-1080	8319
23557 7590 03/11/2008 SALIWANCHIK LLOYD & SALIWANCHIK A PROFESSIONAL ASSOCIATION PO BOX 142950 GAINESVILLE, FL 32614-2950			EXAMINER KINSEY WHITE, NICOLE ERIN	
			ART UNIT 1648	PAPER NUMBER
			MAIL DATE 03/11/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary**Application No.**

10/580,769

Applicant(s)

GRAINGER, CHRISTOPHER IAIN

Examiner

Nicole Kinsey White, PhD

Art Unit

1648

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 November 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) 17-28 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 May 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>3/16/2007</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Applicants' election of Group I (claims 1-16) in the reply filed on November 19, 2007 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Oath/Declaration

The oath or declaration filed August 9, 2006 is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because non-initialed and/or non-dated alterations have been made to the oath or declaration (post office address for Christopher Grainger). See 37 CFR 1.52(c).

Further, the filing date of the foreign priority document is incorrect and should state November 28, 2003 instead of November 27, 2003.

Claim Objections

Claim 1 is objected to because of the following informalities: Claim 1 recites a method comprising "the steps of" but only recites one step. Applicant should amend the claim to recite "step." Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3-5, 7, 8, 12 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Sutton et al. (WO 97/36578).

The claims are drawn to a method for producing a micro-particle dry powder comprising a viral particle, comprising the steps of: spray-drying a mixture of the viral particle and a stabilizing carbohydrate using an outlet temperature of no more than 60°C, where the concentration of carbohydrate is from 2% w/v to 70% w/v (claim 3) or from 30% w/v to 60% w/v (claim 4) or from 40% w/v to 55% w/v (claim 5). The outlet temperature can further range from 20 to 40°C (claim 7), the feed rate of the spray dryer is from 0.05 to 2 g/min (claim 8), and the drying air pressure is from 1.5 bar to 3 bar (claim 12).

Sutton et al. discloses a method for producing a microparticle dry powder for, *inter alia*, pulmonary administration comprising spray-drying a mixture of a therapeutic agent (e.g., a retrovirus or herpes virus) (see page 5, lines 1-5 and Example 3) and an excipient (e.g., a carbohydrate such as glucose or sucrose) (see page 6, lines 5-10 and Example 3). The amount of carbohydrate is at least 50% weight of the mixture, and often at least 70% to 80% (see page 6, lines 16-18). The outlet temperature can range

from 40°C to 150°C (see page 9, lines 21-22 and see Example 3 where an outlet temperature of 39.9°C was used), and the feed rate can be 0.75 g/min or 0.72 g/min (see Examples 1-3). Sutton et al. also discloses that the drying air pressure can range from 1×10^5 to 10×10^5 Pa (see page 7, lines 30-33), which is equivalent to 1 to 10 bars.

Thus, Sutton et al. anticipates the claimed invention.

Claims 1, 2 and 13-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Bot et al. (WO 00/00215).

The claims are drawn to a method for producing a micro-particle dry powder comprising a viral particle, comprising the steps of: spray-drying a mixture of the viral particle and a stabilizing carbohydrate using an outlet temperature of no more than 60°C, where the stabilizing carbohydrate is trehalose (claim 2) and wherein the drying air flow rate is from 4.8L/sec to 8L/sec (claim 13), the atomization air flow rate is from 0.10 to 0.6L/sec (claim 14), and the virus is an envelope virus (claim 15).

Bot et al. discloses a method for producing a microparticle dry powder for, *inter alia*, pulmonary administration comprising spray-drying a mixture of a bioactive agent (e.g., a virus such as live influenza) (see page 9, lines 24-28 and Example XIV) and a carbohydrate (e.g., trehalose or starch) (see page 24, lines 16-20 and Example XIV). Bot et al. further teaches that the outlet temperature can range from 40°C to 120°C depending on the composition of the feed and the desired particulate characteristics (see page 37, lines 16-18), the aspiration air flow can be 300 L/min (5 L/sec), the feed

rate can be 3 mL/min to 15 mL/min, and the atomization air flow rate is between 25 L/min to 50 L/min (0.42 L/sec to 0.83 L/sec) (see pages 37-39).

Thus, Bot et al. anticipates the claimed invention.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sutton et al. (WO 97/36578) as applied to claim 1 above and further in view of Roser et al. (U.S. Patent No. 6,190,701).

The claim is drawn to a method for producing a micro-particle dry powder comprising a viral particle, comprising the steps of: spray-drying a mixture of the viral particle and a stabilizing carbohydrate using an outlet temperature of no more than 60°C, where the stabilizing carbohydrate is trehalose.

The teachings of Sutton et al. are discussed above. Sutton et al. does not teach the use of trehalose. It is well known in the art that trehalose, a carbohydrate, is commonly used as a stabilizer during spray-drying as evidenced by Roser et al. Roser et al. teaches that as a sugar solution containing an active molecule is dried, it can either crystallize when the solubility limit of the sugar is reached, or can become a supersaturated syrup. The ability of the sugar to resist crystallization is a crucial

property of a good stabilizer. Trehalose is good at this. Further drying progressively solidifies the syrup, which turns into a glass at a low residual water content. Chemical diffusion is negligible in a glass and therefore chemical reactions virtually cease. Since denaturation is a chemical change it cannot occur in the glass and the molecules are stabilized (see col. 2, lines 35-51).

Thus, it would have been obvious for one of ordinary skill in the art to substitute trehalose for sucrose, known stabilizers, and the results would have been predictable.

Claims 3-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bot et al. (WO 00/00215) as applied to claim 1 above.

The teachings of Bot et al. are discussed above. Bot et al. does not disclose the carbohydrate concentrations recited in claims 3-6; however, it is obvious and well within the purview of one of ordinary skill in the art to generate compositions with varying amounts of carbohydrate.

According to section 2144.05 of the MPEP, differences in concentration or temperature will not support the patentability of subject matter encompassed by the prior art unless there is evidence indicating such concentration or temperature is critical. "[W]here the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation." In re Aller, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955). See also *Peterson*, 315 F.3d at 1330, 65 USPQ2d at 1382 ("The normal desire of scientists or artisans to improve upon what is already generally known provides the motivation to determine

where in a disclosed set of percentage ranges is the optimum combination of percentages.”)

A particular parameter must first be recognized as a result-effective variable, i.e., a variable, which achieves a recognized result, before the determination of the optimum or workable ranges of said variable might be characterized as routine experimentation. In re Antonie, 559 F.2d 618, 195 USPQ 6 (CCPA 1977). In the instant application, the concentration of carbohydrate used by Bot et al. produced a recognized result (i.e., stable microparticles comprising virus (e.g., Example XIV). Therefore, determining other optimum or workable concentrations of carbohydrate is routine experimentation.

Absent a showing of unexpected results, the concentrations of carbohydrates recited in claims 3-6 are obvious over Bot et al.

Claims 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sutton et al. (WO 97/36578) or Bot et al. (WO 00/00215) as applied to claim 1 above.

The claims are drawn to a method for producing a micro-particle dry powder comprising a viral particle, comprising the steps of: spray-drying a mixture of the viral particle and a stabilizing carbohydrate using an outlet temperature of no more than 60°C, where the spray dryer nozzle-tip configuration is 1 bar 10L/sec to 3 bar 30L/sec (claim 9) or 1.5 bar 14L/sec (claim 10) or 3 bar 22L/sec (claim 11).

Both Sutton et al. and Bot et al. teach spray drying devices with nozzles. However, neither Sutton et al. nor Bot et al. teaches the nozzle configuration recited in claims 9-11. Nonetheless, it is well within the purview of one of ordinary skill in the art

to select and/or vary certain aspects or parameters of a spray drying device, including operating conditions such as inlet and outlet temperature, feed rate, atomization pressure, flow rate of the drying air, and nozzle configuration as noted on page 39 (lines 3-5) of Bot et al.

Further, according to section 2144.05 of the MPEP, differences in concentration or temperature will not support the patentability of subject matter encompassed by the prior art unless there is evidence indicating such concentration or temperature is critical. "[W]here the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation." In re Aller, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955). See also *Peterson*, 315 F.3d at 1330, 65 USPQ2d at 1382 ("The normal desire of scientists or artisans to improve upon what is already generally known provides the motivation to determine where in a disclosed set of percentage ranges is the optimum combination of percentages.")

A particular parameter must first be recognized as a result-effective variable, i.e., a variable, which achieves a recognized result, before the determination of the optimum or workable ranges of said variable might be characterized as routine experimentation. In re Antonie, 559 F.2d 618, 195 USPQ 6 (CCPA 1977). In the instant application, the spray drying devices/nozzles used by Bot et al. and Sutton et al. produced a recognized result (i.e., a stable microparticle dry powder comprising virus, as claimed by applicant). Therefore, determining other optimum or workable nozzle configurations is routine experimentation.

Absent a showing of unexpected results, the nozzle configurations recited in claims 9-11 are obvious over Bot et al. or Sutton et al.

Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sutton et al. (WO 97/36578) or Bot et al. (WO 00/00215) as applied to claim 1 above and further in view of LiCalsi et al. (Vaccine, 1999, 17:1796-1803).

The claim is drawn to a method for producing a micro-particle dry powder comprising a viral particle, comprising the steps of: spray-drying a mixture of the viral particle and a stabilizing carbohydrate using an outlet temperature of no more than 60°C, where the virus is measles virus.

The teachings of Sutton et al. and Bot et al. are outlined above. Neither reference teaches the use of the measles virus in the claimed method. However, LiCalsi et al. teaches the use of measles virus in dry powder preparations for vaccination via inhalation. LiCalsi et al. teaches that the dry powder vaccines can be formed by a variety of techniques including spray drying, precipitation from supercritical fluids, and jet milling or micronization (see page 1800, left column).

Therefore, it would have been obvious to one of ordinary skill in the art to modify the method taught by Bot et al. or Sutton et al. and include measles virus. One would have been motivated to do so given the suggestion by LiCalsi et al. that a dry powder measles vaccine is more stable than a lyophilized vaccine (see the Introduction and section 2.3). There would have been a reasonable expectation of success given the fact that both Bot et al. and Sutton et al. disclose producing dry powder composition

with viruses similar in size and structure to measles virus. Thus, the invention as a whole was clearly *prima facie* obvious to one of ordinary skill in the art at the time the invention was made.

Conclusion

No claim is allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nicole Kinsey White, PhD whose telephone number is (571) 272-9943. The examiner can normally be reached on Monday through Friday from 8:00 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bruce Campell can be reached on (571) 272-0974. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

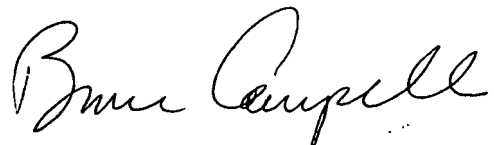
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